

OFFICE OF THE ATTORNEY GENERAL

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JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable Wayne Teague
State Superintendent of Education
5114 Gordon Persons Building
Montgomery, Alabama 36130

State Superintendent of
Education - State Board of
Education - Education
Improvement Act - State
Department of Education

The Education Improvement Act
of 1991 does not prohibit the
State Superintendent of
Education or the State
Department of Education from
performing studies, compiling
reports, and gathering
information, as these
activities are not contingent
upon new funds being
appropriated or otherwise being
made available.

Dear Dr. Teague:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

What is the effect of the resolution of
the State Board of Education...upon the

requirements imposed upon the State Department of Education and the State Superintendent of Education by the Education Improvement Act? Am I required to comply with the mandates of the Act which require the State Superintendent and the State Department to make various reports to the Legislature, and if so, to what extent?

FACTS AND ANALYSIS

The Education Improvement Act of 1991, Act No. 91-323, Acts of Alabama 1991, places responsibilities upon the State Board of Education, State Superintendent of Education, and the State Department of Education, to perform pilot studies, collect and review data, and prepare reports regarding various aspects of the Act. As a practical matter, those activities delegated to the State Board of Education would be implemented through the administration of the State Superintendent of Education and the State Department of Education. Consequently, those duties assigned to the State Board of Education ultimately fall upon the State Superintendent and State Department of Education.

As examples of these duties, under Section 14, the State Superintendent of Education is required to file an annual schools of choice report prior to August 1 of each year to the State Board of Education. Section 16 of the Act requires the State Department of Education to develop procedures to integrate technology training into teacher training programs at institutions of higher learning. Section 21 requires the State Superintendent of Education to review existing laws and recommend to the Legislature changes to encourage local school systems to, among other things, create programs to improve drop-out rates, parental and community involvement, and student performance. Lastly, Section 23 requires the State Board of Education to develop a financial tracking and reporting system of all funds allocated to local school systems and local schools in each system.

On October 10, 1991, the State Board of Education adopted a resolution which recommended delay in implementing any part of the Education Improvement Act which is contingent upon funding, presumably, new or additional funding.

Section 25 of the Act provides:

"Any and all mandates contained in the provisions of this act shall be mandated only to the extent that funds are appropriated or otherwise made available for the purposes of implementing such mandate."

Section 25 provides that provisions of the Act requiring additional funding will be implemented only when the Legislature appropriates the funds for the particular program. The mandates of the Education Improvement Act must be met only to the extent that funds are appropriated to implement them. Some mandates do not require an appropriation, those being many of the data collecting and reporting requirements of the State Superintendent of Education and the State Department of Education. Section 25 is intended to postpone the implementation of those portions of the Act which require new appropriations until such appropriations are made. It has no effect on those portions of the Act which require or can be accomplished without a new appropriation. If the State Superintendent of Education and State Department of Education have the ability to otherwise perform some or all of the required studies, reports, and data collection required by the Act, they may proceed to perform these duties notwithstanding the language of Section 25.

CONCLUSION

The Education Improvement Act does not prohibit the State Superintendent of Education or the State Department of Education from performing studies, compiling reports, and gathering information and data, as these activities are not contingent upon new funds being appropriated or otherwise made available.

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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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